regards as the Divine law without being "a notorious evil liver." Such cases indicate the difficulty of enforcing discipline in the Church of England. It is hardly necessary to say that the decision has not met with the approval of the leaders of the Church.—Canada Law Journal for September.

Note.—The age-long struggle between the church and the state was fought to a finish in this case, and presents another instance of the futile efforts on the part of the church to retain its temporal power and rise above the law. This titanic struggle has been going on ever since the days when the Church of Rome was finally driven into the walls of the Vatican and restricted to its narrow confines. By the Deceased Wives-Sisters Marriage Act of 1907, a marriage by a man with his deceased wife's sister was made legal, yet the Church of England boldly endeavored to discredit one of its members who was acting entirely within the law. This attempt was promptly rebuked by the House of Lords.

Criminal Law—Evidence—Charge of Illegal Operation on a Woman—Statements of Deceased Woman as to Operation.—Rex *v.* Thomson (1912) 3 K. B. 19. This was a criminal prosecution for having used an instrument on a woman to procure a miscarriage. The defendant set up that he had done nothing, and that the woman herself had performed the operation; and in support of his defence he tendered evidence of statements made by the woman, who was dead, that she intended herself to perform the operation, and also that she had in fact performed it. The judge at the trial rejected the evidence as being merely hearsay and, therefore, inadmissible, and the Divisional Court (Lord Alverstone, C. J., and Darling and Avory, JJ.) held that he was right, there being no ground for admitting the statements either as part of the res gestæ or as a dying declaration, or as an admission against interest.—Canada Law Journal for October.

Note.—The decision in the principal case is clearly in accord with the weight of authority in this country.

The declarations in question were merely a narration of past events and therefore inadmissible because constituting no part of the res gestæ. People *v.* Murphy, 101 N. Y. 126, 4 N. E. 326, 54 Am. Rep. 661; Maine *v.* People, 9 Hun (N. Y.) 113; Com. *v.* Felch, 132 Mass. 23; Hays *v.* State, 40 Md. 633; People *v.* Aikin, 66 Mich. 460, 11 Am. St. Rep. 512; State *v.* Clements, 15 Or. 237.

Thus it was held in Hauk *v.* State, 148 Ind. 238, 46 N. E. 127 that declarations by the woman on whom an alleged operation has been performed, made several days before the operation with which defendant is charged, purporting to recite that she had attempted to operate on herself, are inadmissible.

Likewise, her declarations, not made in the presence of the defend-

ant, on her return from the place where it is alleged the operation was performed, and purporting to state what was done at such place, are inadmissible. State *v.* Wood, 53 N. H. 484; People *v.* Murphy, 101 N. Y. 126, 4 N. E. 326, 54 Am. Rep. 661; People *v.* Davis, 56 N. Y. 95; Maine *v.* People, 9 Hun (N. Y.) 113.

And since dying declarations are only admissible where death is the subject of the accusation and the circumstance of that death the subject matter of the declaration, and since death in and of itself is not a constituent element of the crime of abortion, therefore dying declarations are inadmissible against the defendant in a prosecution charging that crime. Railing *v.* Com., 110 Pa. St. 100, overruling Com. *v.* Bruce, 5 Crim. L. Mag. 680; Com. *v.* Homer, 153 Mass. 343; People *v.* Davis, 56 N. Y. 95; State *v.* Harper, 35 O. St. 78, 35 Am. Rep. 596; Reg. *v.* Hind, 8 Cox C. C. 300.

Dying declarations are admissible only when the death of the declarant is the subject of the charge, and the circumstances of the death are the subject of the dying declarations. Rex *v.* Mead, 2 B. &. C. 605; 1 Greenl. Ev., § 156; Rex *v.* Lloyd, 4 C. &. P. 233; Runyan *v.* Price, 15 Ohio St. 8; State *v.* Harper, 35 O. St. 78, 35 Am. Rep. 596, 597; Montgomery *v.* State, 80 Ind. 338, 41 Am. Rep. 815; Peoples *v.* Com., 87 Ky. 487, 9 S. W. 509; State *v.* Dickinson, 41 Wis. 299.

Hence, upon an indictment for feloniously using an instrument upon the person of a woman, who afterward died, with intent to procure an abortion and not an indictment for homicide, the dying declarations are inadmissible. Reg. *v.* Hind, 8 Cox C. C. 300; State *v.* Harper, 35 O. St. 78, 35 Am. Rep. 596, 597; State *v.* Barber, 28 O. St. 583; People *v.* Davis, 56 N. Y. 95.

But where the woman conspires with others to commit the offense on her own person and the conspiracy is shown, her declarations in furtherance of the common design, as, for example, statements respecting the object of her visit to the place where the offense was committed and what took place on that occasion, are evidence against others engaged with her in the criminal act. Solander *v.* People, 2 Colo. 48; State *v.* Howard, 32 Vt. 380.

Will—Construction—"Or" Read as "and"—Gift over in Case of Prior Taker Dying "Intestate or Childless, or under Twenty-One."—In re Crutchley, Kidson *v.* Marsden (1912), 2 Ch. 335. In this case the will of a testator was in question, whereby he gave to his niece F. A. Smith two freehold houses, for her own use and disposal, "subject only to the following conditions, namely, in the event of the said F. A. Smith dying intestate or childless, or under twenty-one (but not otherwise), the said two houses shall become the property of" Richard Marsden. F. A. Smith attained 21 and died a spinster, and intestate; and the point in controversy was whether or not the gift over took effect. Parker, J., decided that it did not;